

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5663 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI M GAJJAR

Versus

DIST PANCHAYAT

Appearance:

MR VM DHOTRE for Petitioners
Shri Digant P. Joshi, ASSTT. GOVERNMENT PLEADER for
Respondent No. 1, 3, 4
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 03/03/2000

ORAL JUDGEMENT :

The present petition is filed by two petitioners,
one Mukehsbhai Maneklal Gajjar and another Mathurbhai
Bijalbhai Vasawa. It is stated by Shri V.M. Dhotre,
learned counsel for the petitioners that petitioner no.2
had expired and hence he is not pressing the matter for
petitioner no.2. Thus, petitioner no.1 is referred to as
"the petitioner" hereafter.

2. The petitioners approached this Court against the apprehended termination of the petitioners from the post of Assistant Instructors, to which they were appointed. The petitioner was appointed by an order dated 10.11.1976. It is the case of the petitioner that he was appointed in the year 1976 and since then he has been serving continuously and without any break, sincerely and honestly and that there is no complaint whatsoever pertaining to the service of the petitioner. It is also stated by the petitioner that the service record of the petitioner is blemishless and dotless. It is also stated by the petitioner that though it is mentioned in the appointment order at Annexure 'A' to the petition, the appointment of the petitioner to the post in question is on temporary basis, but in hard reality, the petitioner has continued to serve for all these years, i.e. for a period of more than 12 years on the date of filing of the petition. The petition came to be filed on 23.8.1988 and after issuing notice on 23.8.1988 and protecting the petitioner by way of ad interim relief, directing the respondents to maintain status quo, which was continued from time to time and on 23.12.1988, rule came to be issued in the matter. After hearing the parties with regard to interim relief, ad interim relief granted earlier was ordered to be continued. Hence by virtue of the order of this Court in 1988, the petitioner has continued in service till date and thus, he has put in almost 24 years of service by now.

3. It is the case of the petitioner that the authorities sought to terminate the services of the petitioner by an order dated 22.8.1988 (Annexure 'B'), wherein it is stated that as the appointment is illegal, the petitioner is terminated from service with effect from 23.8.1988 (After Office Hours). The petitioner is also given a copy of the order of the District Panchayat, Bharuch (Cooperative Branch) dated 19.8.1988. In the said order it is mentioned that vide the letters under reference at serial nos.2 and 3, the posts of temporary employees are to be filled in by the candidates selected by the Gujarat Panchayat Services Selection Board ("GPSSB" for brevity). It is also mentioned in the said order that under letter dated 10.6.1988 a demand was sent. It is mentioned that as mentioned in the appointment order dated 10.11.1976, at conditions nos.1 and 3A that the appointment of the petitioner was on the condition that approval from GPSSB will be required to be obtained and further as and when there is an advertisement by GPSSB, the petitioner will have to pass through the fresh procedure. It is also mentioned in the said letter that as no approval is received from the

Secretary, GPSSB, Ahmedabad and that as the petitioner has not passed the examination advertised by GPSSB from time to time, the appointment of the petitioner is illegal and therefore, his services are terminated.

4. Learned advocate Shri Dhotre has invited my attention to the appointment order of the petitioner which is produced at Annexure 'A' (colly.) that there is no condition like 3A in the said appointment order. As the same is a typed copy of the original, the advocate for the petitioner was asked to produce the original before this Court. Shri Dhotre produced the original along with a xerox copy thereof. The Court has perused the appointment order and it is found that the appointment order is the cyclostyled form wherein blanks are filled in with ink. In that there is no condition as 3A. However, there is condition no.1, which says that the appointment of the petitioner is temporary and that he will be liable to be terminated at any time without giving any notice and without assigning any reasons. The xerox copy of the appointment order is taken on record and the original is returned to the learned advocate for the petitioner, Shri Dhotre.

5. Shri Dhotre has invited my attention to the judgement of the Honourable Supreme Court in The Navagarh Cooperative Central Bank Ltd. and another v. Narayan Rath and another, AIR 1977 SC 112, wherein the Apex court while dealing with a similar question, has observed in para 4 of the judgment as under :

"4. The writ petition filed by respondent no.1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as secretary was decided upon in a meeting over which the Registrar of Cooperative Societies had himself presided. the writ petition in substance is directed not against any order passed by the Cooperative Bank but against the order passed by the Registrar disapproving the appointment of respondent no.1 as secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent no.1's appointment as a secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years."

6. The facts of the case before the Honourable Supreme Court are almost identical to the facts of the present case inasmuch as in the present case services of the petitioner are sought to be terminated in the year 1988, i.e after the petitioner having put in 12 years of service on the ground that GPSSB has not granted approval to the appointment of the petitioner while in the case before the Honourable Supreme Court, the services of the petitioner therein were sought to be terminated after 13 years on the ground that his appointment was not approved by the Registrar of Cooperative Societies. The Honourable Supreme Court categorically held that, "It is undesirable that appointments should be invalidated in this manner after a lapse of several years."

7. Shri Dhotre, learned advocate for the petitioner has also relied upon a judgement in Vipul S. Baxi and another v. State of Gujarat and others, 1988 (1) GLH (UJ) 34, wherein the services of the petitioner, who had put in 5 to 6 years of service came to be terminated on the ground that their names were not called for from Employment Exchange and hence their appointment was irregular. This Court has held that;

"The policy of calling names from Employment Exchange is really good and must be followed. But that does not mean that persons who have been appointed before 5- 6 years should be made victim of some irregularity committed by certain officer of respondents. It is not the case of respondents that petitioners made some misrepresentation or were appointed by some officer to favour them. Petitioners should not be made to suffer on account of such mistake for which they are not responsible."

In the present case the order terminating services of the petitioner is not passed on the ground that the appointment of the petitioner was made irregularly. The only ground on which services of the petitioner are sought to be terminated is that the authority concerned did not obtain the approval of the GPSSB. For this non obtaining the approval, the petitioner cannot be held responsible and cannot be punished for the same. It is not the case of the authorities that the authorities sought for approval of the GPSSB and the same was denied. On the contrary it is clearly stated in the order dated 19.8.1988, Annexure 'B' to the petition, passed by the District Panchayat, Bharuch, that as was mentioned in condition nos.1 and 3A of your appointment order dated 10.11.1976, your appointment is subject to obtaining

approval from GPSSB and that the petitioner was also required to pass through the process after making an application, as and when advertisement is published by the GPSSB. It is further mentioned in the said letter that as approval from GPSSB is not received and that the petitioner has not passed the examination, which was advertised by the GPSSB from time to time, the petitioner's appointment was illegal and thus the petitioner's services are terminated.

8. But then it is found from the original appointment order that Condition No.3A was not incorporated in the appointment order of the petitioner and it is not the case of the respondent authorities that they had asked the petitioner at any subsequent stage to pass the examination held by GPSSB. So this ground also is not a valid ground on which the petitioner's services can be terminated. Learned advocate for the petitioner, Shri Dhotre has also invited my attention to the judgement of this Court in Special Civil Application No.7527 of 1988 between Pankaj Joshi and the same respondent, namely, District Panchayat, Bharuch, wherein also the services of the petitioner therein were sought to be terminated on the ground that no approval from the Government was obtained to the appointment of the petitioner in a post held by him. Though the petitioner continued to work for 13 years and thereafter when his services were sought to be terminated on the ground of non obtaining of approval from the Government, this Court held that action of the respondents is illegal and the petition was allowed declaring that the petitioner's services are not liable to be terminated.

9. Shri Digant Joshi for respondent no.3 has also perused the original appointment order of the petitioner produced by Shri Dhotre, learned advocate for the petitioner and Shri Joshi is not in a position to point out any tampering with the document in question. Shri Joshi is not able to support the order of termination passed by the respondent authorities.

10. The orders of dismissal at Annexure 'B' dated 22.8.1988 and 19.8.1988 are quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

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